

FITAPELLI & SCHAFFER, LLP

Joseph A. Fitapelli
Brian S. Schaffer
Frank J. Mazzaferro
475 Park Avenue South, 12th Floor
New York, New York 10016
Telephone: (212) 300-0375

TERRELL MARSHALL DAUDT & WILLIE PLLC

Beth E. Terrell, *Admitted Pro Hac Vice*
Mary B. Reiten, *Admitted Pro Hac Vice*
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CHRISTINA MELITO and RYAN
METZGER individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

AMERICAN EAGLE OUTFITTERS, INC., a
Delaware corporation, AEO
MANAGEMENT CO., a Delaware
corporation, and EBAY ENTERPRISE, INC.,
f/k/a EBAY ENTERPRISE MARKETING
SOLUTIONS, INC. a Delaware corporation,

Defendants.

NO. 1:14-cv-02440-VEC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY

Plaintiffs Christina Melito and Ryan Metzger (hereinafter referred to as “Plaintiffs”), by their undersigned counsel, for this class action complaint against Defendants American Eagle Outfitters, AEO Management Co., eBay Enterprise, Inc., f/k/a eBay Enterprise Marketing Solutions, and their present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, and/or other related entities (hereinafter referred to as “Defendants”) allege as follows:

INTRODUCTION

1
2 1. Nature of Action. Plaintiffs, individually and as class representatives for all
3 others similarly situated, bring this action against Defendants for violations of the Telephone
4 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).

PARTIES

5
6 2. Plaintiffs. Plaintiff Christina Melito (“Melito”) is a citizen of New York, residing
7 in Suffolk County, New York.

8 3. Plaintiff Ryan Metzger (“Metzger”) is a citizen of Oklahoma, residing in Payne
9 County, Oklahoma.

10 4. Defendant American Eagle Outfitters, Inc. American Eagle Outfitters, Inc. is a
11 Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. AEO is
12 registered to do and is doing business in New York, including in the Southern District, and
13 throughout the United States.

14 5. Defendant AEO Management Co. AEO Management Co. is a Delaware
15 corporation with its principal place of business in Pittsburgh, Pennsylvania. AEO Management
16 is registered to do and is doing business in New York, including in the Southern District, and
17 throughout the United States. Collectively, Defendants American Eagle Outfitters, Inc. and AEO
18 Management Co. are referenced herein as “AEO”.

19 6. Defendant eBay Enterprise, Inc., f/k/a eBay Enterprise Marketing Solutions
20 (“eBay”) is a Delaware corporation with its principal place of business in King of Prussia,
21 Pennsylvania. eBay is registered to do and is doing business in New York, including in the
22 Southern District, and throughout the United States.

JURISDICTION AND VENUE

23
24 7. Subject Matter Jurisdiction. This Court has subject matter jurisdiction over
25 Plaintiffs’ TCPA claims pursuant to 28 U.S.C. § 1331 because Plaintiffs’ TCPA claims arise
26 under the laws of the United States, specifically 47 U.S.C. § 227.

1 8. Personal Jurisdiction. This Court has personal jurisdiction over Defendants
2 because it has submitted to New York jurisdiction by registering with the Secretary of State to do
3 business in the state of New York, and the wrongful acts alleged in this Complaint were
4 committed in New York.

5 9. Venue. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) as
6 Defendants reside in the district.

7 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47 U.S.C. § 227**

8 10. In 1991, Congress enacted the TCPA in response to a growing number of
9 consumer complaints regarding certain telemarketing practices.

10 11. The TCPA makes it unlawful “to make any call (other than a call made for
11 emergency purposes or made with the prior express consent of the called party) using an
12 automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone
13 number assigned to a ... cellular telephone service.” *See* 47 U.S.C. § 227(b)(1)(A)(iii). The
14 TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C.
15 § 227(b)(1)(A). *See* 47 U.S.C. § 227(b)(3).

16 12. The TCPA also makes it unlawful for any entity to make more than one call in a
17 12-month period to any number that is registered with the National Do-Not-Call Registry or that
18 entity’s company specific do-not-call list. *See* 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2)
19 & (d). The TCPA provides a private cause of action to persons receiving calls in violation of 47
20 U.S.C. § 227(c)(5).

21 13. Federal Communication Commission (“FCC”) promulgated regulations
22 “generally establish that the party on whose behalf a solicitation is made bears ultimate
23 responsibility for any violations.” *See* Rules and Regulations Implementing the Telephone
24 Consumer Protection Act of 1991, Memorandum and Order, 10 FCC Rcd. 12391, 12397 ¶ 13
25 (1995).

Plaintiff Melito

22. Beginning in or around February 2014, Melito received numerous Spam Text messages from or on behalf of AEO on her cellular telephone.

23. The Spam Text messages were from short code 324-53 and advertised promotions such as, “AEO: Free AEO Jeans,” “AEO: Award Worthy Outfits: Get up to \$30 off your purchase...,” “AEO: Every fit & length you could ever want. 20% off when you buy our newest shorts...,” “AEO: Party all weekend! 25% off today or 20% off Sat & Sun...,” “AEO: Flip flop you don’t stop: FREE flip flops when you buy any two AEO shorts,” and “AEO: Introducing American Beagle Outfitters: the first line for you & your dog!”

24. The Spam Text messages direct the recipient to go to the websites: <http://dqs.co/8hy86u>, on.ae.com/outfit, on.ae.com/Award, on.ae.com/AEOshorts, ae.com, on.ae.com/Lucky, on.ae.com/flipflop, and/or on.ae.com/ABO.

25. Each of the websites is owned, maintained, and/or operated by Defendant AEO.

26. Melito did not provide prior express consent, either written or oral, to receive Spam Text messages on her cellular telephone from or on behalf of AEO.

27. AEO is responsible for making the above-described Spam Text messages.

28. AEO has made a large number of Spam Text messages to persons in New York and throughout the United States.

29. AEO intends to continue to make similar Spam Text messages to persons in New York and throughout the United States.

Plaintiff Metzger

30. Beginning in or around December 2012, a time period in which eBay sent text messages on behalf of AEO, Metzger received numerous Spam Text messages from or on behalf of Defendants on his cellular telephone.

31. The Spam Text messages advertised promotions offered by AEO.

32. On several occasions, Metzger attempted to opt-out of receiving text messages from Defendants by texting "STOP" in response to the text messages he received from Defendants.

33. Despite Metzger's attempts to opt-out, he continued to receive text messages from Defendants.

34. Metzger did not provide prior express consent, either written or oral, to receive Spam Text messages on his cellular telephone from or on behalf of Defendants.

35. Defendants are responsible for making the above-described Spam Text messages.

36. Defendants have made a large number of Spam Text messages to persons in Oklahoma and throughout the United States.

37. Defendants intend to continue to make similar Spam Text messages to persons in Oklahoma and throughout the United States.

AEO CLASS ACTION ALLEGATIONS

38. Class Definition. Pursuant to CR 23(b)(2) and (b)(3), Plaintiffs bring this case as a class action on behalf of National Classes as defined as follows:

AEO Spam Text Class: All persons in the United States who: (a) received a text message sent by AEO and/or a third party acting on AEO's behalf; (b) promoting AEO's goods or services; (c) on their cellular telephone line; (d) that were sent using an automatic telephone dialing system; (e) at any time in the period that begins four years before April 8, 2014 to trial.

AEO Revocation Class: All persons in the United States who: (a) received a text message sent by AEO and/or a third party acting on AEO's behalf; (b) after unsubscribing from receiving further text messages from AEO; (c) on their cellular telephone line; (d) that were sent using an automatic telephone dialing system; (e) at any time in the period that begins April 8, 2014 to trial.

AEO Internal DNC Class: All persons in the United States who: (a) received more than one text message, initiated by AEO and/or on AEO's behalf; (b) promoting AEO's goods or services; (c) more than 30 days after requesting not to receive further text messages; (d) in a 12-month period; (e) on their cellular telephone

line; and (f) at any time in the period that begins April 8, 2014 to trial.

EBAY CLASS ACTION ALLEGATIONS

39. Class Definition. Pursuant to CR 23(b)(2) and (b)(3), Plaintiffs bring this case as a class action on behalf of National Classes as defined as follows:

eBay Spam Text Class: All persons in the United States who: (a) received a text message sent by eBay and/or a third party acting on eBay's behalf; (b) promoting AEO's goods or services; (c) on their cellular telephone line; (d) that were sent using an automatic telephone dialing system; (e) at any time in the period that begins four years before the date of filing this First Amended Complaint to trial.

eBay Revocation Class: All persons in the United States who: (a) received a text message sent by eBay and/or a third party acting on eBay's behalf; (b) after unsubscribing from receiving further text messages from eBay; (c) on their cellular telephone line; (d) that were sent using an automatic telephone dialing system; (e) at any time in the period that begins four years before the date of filing this First Amended Complaint to trial.

eBay DNC Class: All persons in the United States who: (a) received more than one text message, initiated by eBay and/or on eBay's behalf; (b) promoting AEO's goods or services; (c) more than 30 days after requesting not to receive further text messages; (d) in a 12-month period; (e) on their cellular telephone line; and (f) at any time in the period that begins four years before the date of filing this First Amended Complaint to trial.

Excluded from the AEO Spam Text Class, the AEO Revocation Class, and the AEO Internal DNC Class are AEO, any entity in which Defendants AEO have a controlling interest or that has a controlling interest in AEO, and Defendant AEO's legal representatives, assignees, and successors. Excluded from the eBay Spam Text Class, the eBay Revocation Class, and the eBay Internal DNC Class is eBay, any entity in which eBay has a controlling interest or that has a controlling interest in eBay, and eBay's legal representatives, assignees, and successors. Also excluded from the aforementioned, collectively referenced as "Classes," is the judge to whom this case is assigned and any member of the Judge's immediate family.

1 40. Numerosity. The Classes are so numerous that joinder of all members is
2 impracticable. On information and belief, the Classes each have more than 1,000 members.
3 Moreover, the disposition of the claims of the Classes in a single action will provide substantial
4 benefits to all parties and the Court.

5 41. Commonality. There are numerous questions of law and fact common to
6 Plaintiffs and members of the Classes. These common questions of law and fact include, but are
7 not limited to, the following:

8 a. As to Plaintiffs and members of the AEO Spam Text Class, whether AEO and/or
9 their affiliates, agents, and/or other persons or entities acting on AEO's behalf violated 47 U.S.C.
10 § 227(b)(1)(A)(iii) by making unsolicited commercial text calls to the cellular telephone numbers
11 of Plaintiffs and members of the AEO Spam Text Class;

12 b. As to Plaintiffs and members of the AEO Spam Text Class, whether AEO and/or
13 their affiliates, agents, and/or other persons or entities acting on AEO's behalf knowingly and/or
14 willfully violated 47 U.S.C. § 227(b)(1)(A)(iii) by making unsolicited commercial text calls to
15 the cellular telephone numbers of Plaintiffs and members of the AEO Spam Text Class, thus
16 entitling Plaintiffs and members of the AEO Spam Text Class to treble damages;

17 c. As to Plaintiff Metzger and members of the AEO Revocation Class, whether AEO
18 and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf violated
19 47 U.S.C. § 227(b)(1)(A)(iii) by making unsolicited commercial text calls to the cellular
20 telephone numbers of Plaintiff Metzger and members of the AEO Revocation Class after
21 unsubscribing from receiving such text calls;

22 d. As to Plaintiff Metzger and members of the AEO Revocation Class, whether AEO
23 and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf knowingly
24 and/or willfully violated 47 U.S.C. § 227(b)(1)(A)(iii) by making unsolicited commercial text
25 calls to the cellular telephone numbers of Plaintiffs and members of the AEO Revocation Class
26 after unsubscribing from receiving such text calls, thus entitling Plaintiffs and members of the
27 AEO Spam Text Class to treble damages;

1 e. As to Plaintiff Metzger and members of the AEO Internal DNC Class, whether
2 AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf
3 violated 47 C.F.R. § 64.1200(d) by initiating any text call for telemarketing purposes to the
4 cellular telephone numbers of Plaintiff Metzger and members of the Internal DNC Class without
5 following procedures for maintaining a list of persons who request not to receive telemarketing
6 text calls;

7 f. As to Plaintiff Metzger and members of the AEO Internal DNC Class, whether
8 AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf
9 knowingly and/or willfully violated 47 C.F.R. § 64.1200(d) by failing to follow procedures for
10 maintaining a list of persons who request not to receive telemarketing text calls in the future,
11 pursuant to 47 U.S.C. § 227(c)(5)(A), thus entitling Plaintiff Metzger and members of the AEO
12 Internal DNC Class to treble damages;

13 g. Whether AEO is liable for ATDS generated text messages promoting AEO's
14 products and/or services made by AEO's affiliates, agents, and/or other persons or entities acting
15 on AEO's behalf;

16 h. Whether AEO is liable for text calls to persons on AEO's internal do-not-call list
17 made by AEO's affiliates, agents, and/or other persons and entities acting of AEO's behalf;

18 i. Whether AEO and/or their affiliates, agents, and/or other persons or entities
19 acting on AEO's behalf should be enjoined from violating the TCPA in the future;

20 j. As to Plaintiffs and members of the eBay Spam Text Class, whether eBay and/or
21 their affiliates, agents, and/or other persons or entities acting on eBay's behalf violated 47 U.S.C.
22 § 227(b)(1)(A)(iii) by making unsolicited commercial text calls to the cellular telephone numbers
23 of Plaintiffs and members of the eBay Spam Text Class;

24 k. As to Plaintiffs and members of the eBay Spam Text Class, whether eBay and/or
25 their affiliates, agents, and/or other persons or entities acting on eBay's behalf knowingly and/or
26 willfully violated 47 U.S.C. § 227(b)(1)(A)(iii) by making unsolicited commercial text calls to
27

1 the cellular telephone numbers of Plaintiffs and members of the eBay Spam Text Class, thus
2 entitling Plaintiffs and members of the eBay Spam Text Class to treble damages;

3 l. As to Plaintiff Metzger and members of the eBay Revocation Class, whether eBay
4 and/or their affiliates, agents, and/or other persons or entities acting on eBay's behalf violated
5 47 U.S.C. § 227(b)(1)(A)(iii) by making unsolicited commercial text calls to the cellular
6 telephone numbers of Plaintiff Metzger and members of the eBay Revocation Class after
7 unsubscribing from receiving such text calls;

8 m. As to Plaintiff Metzger and members of the eBay Revocation Class, whether eBay
9 and/or their affiliates, agents, and/or other persons or entities acting on eBay's behalf knowingly
10 and/or willfully violated 47 U.S.C. § 227(b)(1)(A)(iii) by making unsolicited commercial text
11 calls to the cellular telephone numbers of Plaintiffs and members of the eBay Revocation Class
12 after unsubscribing from receiving such text calls, thus entitling Plaintiffs and members of the
13 eBay Spam Text Class to treble damages;

14 n. As to Plaintiff Metzger and members of the eBay Internal DNC Class, whether
15 eBay and/or their affiliates, agents, and/or other persons or entities acting on eBay's behalf
16 violated 47 C.F.R. § 64.1200(d) by initiating any text call for telemarketing purposes to the
17 cellular telephone numbers of Plaintiff Metzger and members of the eBay Internal DNC Class
18 without following procedures for maintaining a list of persons who request not to receive
19 telemarketing text calls;

20 o. As to Plaintiff Metzger and members of the eBay Internal DNC Class, whether
21 eBay and/or their affiliates, agents, and/or other persons or entities acting on eBay's behalf
22 knowingly and/or willfully violated 47 C.F.R. § 64.1200(d) by failing to follow procedures for
23 maintaining a list of persons who request not to receive telemarketing text calls in the future,
24 pursuant to 47 U.S.C. § 227(c)(5)(A), thus entitling Plaintiff Metzger and members of the eBay
25 Internal DNC Class to treble damages;

1 p. Whether eBay is liable for ATDS generated text messages promoting AEO's
2 products and/or services made by eBay's affiliates, agents, and/or other persons or entities acting
3 on eBay's behalf;

4 q. Whether eBay is liable for text calls to persons on eBay's internal do-not-call list
5 made by eBay's affiliates, agents, and/or other persons and entities acting of eBay's behalf; and

6 r. Whether eBay and/or their affiliates, agents, and/or other persons or entities
7 acting on eBay's behalf should be enjoined from violating the TCPA in the future.

8 42. Typicality. Plaintiffs' claims are typical of the claims of the Classes. Plaintiffs'
9 claims, like the claims of Classes arise out of the same common course of conduct by Defendants
10 and are based on the same legal and remedial theories.

11 43. Adequacy. Plaintiffs will fairly and adequately protect the interests of the
12 Classes. Plaintiffs have retained competent and capable attorneys with significant experience in
13 complex and class action litigation, including consumer class actions and TCPA class actions.
14 Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the
15 Classes and have the financial resources to do so. Neither Plaintiffs nor their counsel have
16 interests that are contrary to or that conflict with those of the proposed Classes.

17 44. Predominance. Defendants have engaged in a common course of conduct toward
18 Plaintiffs and members of the Classes. The common issues arising from this conduct that affect
19 Plaintiffs and members of the Classes predominate over any individual issues. Adjudication of
20 these common issues in a single action has important and desirable advantages of judicial
21 economy.

22 45. Superiority. A class action is the superior method for the fair and efficient
23 adjudication of this controversy. Classwide relief is essential to compel Defendants to comply
24 with the TCPA. The interest of individual members of the Classes in individually controlling the
25 prosecution of separate claims against Defendants is small because the damages in an individual
26 action for violation of the TCPA are small. Management of these claims is likely to present
27 significantly fewer difficulties than are presented in many class claims because the text calls at

1 issue are all automated. Class treatment is superior to multiple individual suits or piecemeal
 2 litigation because it conserves judicial resources, promotes consistency and efficiency of
 3 adjudication, provides a forum for small claimants, and deters illegal activities. There will be no
 4 significant difficulty in the management of this case as a class action.

5 46. Injunctive and Declaratory Relief Appropriate. Defendants have acted on
 6 grounds generally applicable to the Classes, thereby making final injunctive relief and
 7 corresponding declaratory relief with respect to the Classes appropriate on a classwide basis.
 8 Moreover, on information and belief, Plaintiffs allege that the automated text calls made by
 9 Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants'
 10 behalf that are complained of herein are substantially likely to continue in the future if an
 11 injunction is not entered.

12 **FIRST CAUSE OF ACTION**

13 **Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)** 14 **(Brought on behalf of Plaintiffs and members of the Spam Text Class)**

15 47. Plaintiffs reallege and incorporate by reference each and every allegation set forth
 16 in the preceding paragraphs.

17 48. The foregoing acts and omissions of Defendants and/or their affiliates, agents,
 18 and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple
 19 violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by making unsolicited commercial text
 20 calls to the cellular telephone numbers of Plaintiffs and members of the Spam Text Class.

21 49. As a result of Defendants' and/or their affiliates, agents, and/or other persons or
 22 entities acting on Defendants' behalf's violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii),
 23 Plaintiffs and members of the Spam Text Class presumptively are entitled to an award of \$500 in
 24 damages for each and every text call in violation of the statute, pursuant to 47 U.S.C.
 25 § 227(b)(3)(B).

26 50. Plaintiffs and members of the Spam Text Class are also entitled to and do seek
 27 injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or

1 entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A), by
 2 making unsolicited commercial text calls to cellular telephone numbers, in the future.

3 **SECOND CAUSE OF ACTION**

4 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)**

5 **(Brought on behalf of Plaintiffs and members of the Spam Text Class)**

6 51. Plaintiffs reallege and incorporate by reference each and every allegation set forth
 7 in the preceding paragraphs.

8 52. The foregoing acts and omissions of Defendants and/or their affiliates, agents,
 9 and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple
 10 knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by making
 11 unsolicited commercial text calls to the cellular telephone numbers of Plaintiffs and members of
 12 the Spam Text Class.

13 53. As a result of Defendants' and/or their affiliates, agents, and/or other persons or
 14 entities acting on Defendants' behalf knowing and/or willful violations of the TCPA, 47 U.S.C. §
 15 227(b)(1)(A)(iii), Plaintiffs and members of the Spam Text Class are entitled to treble damages
 16 of up to \$1,500 for each and every text call in violation of the statute, pursuant to 47 U.S.C. §
 17 227(b)(3).

18 54. Plaintiffs and members of the Spam Text Class are also entitled to and do seek
 19 injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or
 20 entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by
 21 making unsolicited commercial text calls to cellular telephone numbers, in the future.

22 **THIRD CAUSE OF ACTION**

23 **Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A) 24 (Brought on behalf of Plaintiff Metzger and members of the Revocation Class)**

25 55. Plaintiffs reallege and incorporate by reference each and every allegation set forth
 26 in the preceding paragraphs.

56. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by making unsolicited commercial text calls to the cellular telephone numbers of Plaintiff Metzger and members of the Revocation Class after unsubscribing from receiving such text calls.

57. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf's violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiffs and members of the Revocation Class presumptively are entitled to an award of \$500 in damages for each and every text call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

58. Plaintiffs and members of the Revocation Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A), by making unsolicited commercial text calls to cellular telephone numbers that have been unsubscribed from receiving such text calls, in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)

(Brought on behalf of Plaintiffs and members of the Revocation Class)

59. Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

60. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by making unsolicited commercial text calls to the cellular telephone numbers of Plaintiff Metzger and members of the Revocation Class after unsubscribing from receiving such text calls.

61. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf knowing and/or willful violations of the TCPA, 47 U.S.C. §

1 227(b)(1)(A)(iii), Plaintiff Metzger and members of the Revocation Class are entitled to treble
 2 damages of up to \$1,500 for each and every text call in violation of the statute, pursuant to
 3 47 U.S.C. § 227(b)(3).

4 62. Plaintiff Metzger and members of the Revocation Class are also entitled to and do
 5 seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons
 6 or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii),
 7 by making unsolicited commercial text calls to cellular telephone numbers that have been
 8 unsubscribed from receiving such text calls, in the future.

9 **FIFTH CAUSE OF ACTION**

10 **Violations of 47 C.F.R. § 64.1200(d) & 47 U.S.C. § 227(c)(5)** 11 **(Brought on behalf of Plaintiff Metzger and members of the Internal DNC Class)**

12 63. Plaintiffs reallege and incorporate by reference each and every allegation set forth
 13 in the preceding paragraphs.

14 64. The foregoing acts and omissions of Defendants and/or their affiliates, agents,
 15 and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple
 16 violations of 47 C.F.R. § 64.1200(d), by initiating any text call for telemarketing purposes to
 17 Plaintiff Metzger and members of the Internal DNC Class, without following procedures for
 18 maintaining a list of persons who request not to receive telemarketing text calls ("internal do-not-
 19 call list"). This includes Defendant's failure to properly record do-not-call requests, failure to
 20 maintain a record of do-not-call requests, and failure to honor do-not-call requests.

21 65. As a result of Defendants' and/or their affiliates, agents, and/or other persons or
 22 entities acting on Defendants' behalf's violations of 47 C.F.R. § 64.1200(d), Plaintiff Metzger
 23 and members of the Internal DNC Class are entitled to an award of \$500 in statutory damages for
 24 each and every call in violation of the internal do-not-call list regulation, pursuant to 47 U.S.C.
 25 § 227(c)(5)(B).

26 66. Plaintiff Metzger and members of the Internal DNC Class are also entitled to and
 27 do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other

persons or entities acting on Defendants' behalf from violating 47 C.F.R. § 64.1200(d) by failing to follow procedures for maintaining a list of persons who request not to receive telemarketing text calls in the future, pursuant to 47 U.S.C. § 227(c)(5)(A).

SIXTH CLAIM FOR RELIEF

Knowing and/or Willful Violations of 47 C.F.R. § 64.1200(d) & 47 U.S.C. § 227(c)(5) (Brought on behalf of Plaintiff Metzger and members of the Internal DNC Class)

67. Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

68. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple knowing and/or willful violations of 47 C.F.R. § 64.1200(d), by initiating any text call for telemarketing purposes to Plaintiff Metzger and members of the Internal DNC Class without following procedures for maintaining a list of persons who request not to receive telemarketing text calls. This includes Defendants' failure to properly record do-not-call requests, failure to maintain a record of do-not-call requests, and failure to honor do-not-call requests.

69. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf's knowing and/or willful violations of 47 C.F.R. § 64.1200(d), Plaintiff Metzger and members of the Internal DNC Class are entitled to an award of treble damages of up to \$1,500 for each and every call in violation of the internal do-not-call list regulation, pursuant to 47 U.S.C. § 227(c)(5)(B).

70. Plaintiff Metzger and members of the Internal DNC Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating 47 C.F.R. § 64.1200(d) by failing to follow procedures for maintaining a list of persons who request not to receive telemarketing text calls in the future, pursuant to 47 U.S.C. § 227(c)(5)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the Classes, pray for judgment against Defendants as follows:

- A. Certification of the proposed Classes;
- B. Appointment of Plaintiff Melito and Plaintiff Metzger as representatives of the Spam Text Class;
- C. Appointment of Plaintiff Metzger as representative of the Revocation Class;
- D. Appointment of Plaintiff Metzger as representative of the Internal DNC Class;
- E. Appointment of the undersigned counsel as counsel for the Classes;
- F. A declaration that Defendants and/or their affiliates, agents, and/or other related entities' actions complained of herein violate the TCPA;
- G. An order enjoining Defendants and/or their affiliates, agents, and/or other related entities, as provided by law, from engaging in the unlawful conduct set forth herein;
- H. An award to Plaintiffs and the Classes of damages, as allowed by law;
- I. An award to Plaintiffs and the Classes of attorneys' fees and costs, as allowed by law and/or equity;
- J. Leave to amend this Complaint to conform to the evidence presented at trial; and
- K. Orders granting such other and further relief as the Court deems necessary, just, and proper.

DEMAND FOR JURY

Plaintiffs demand a trial by jury for all issues so triable.

1 RESPECTFULLY SUBMITTED AND DATED this 2nd day of December, 2014.

2 FITAPELLI & SCHAFFER, LLP

3 By: /s/ Joseph A. Fitapelli
4 Joseph A. Fitapelli
5 Email: jfitapelli@fslawfirm.com
6 Brian S. Schaffer
7 Email: bschaffer@fslawfirm.com
8 Frank J. Mazzaferro
9 Email: fmazzaferro@fslawfirm.com
10 475 Park Avenue South, 12th Floor
11 New York, New York 10016
12 Telephone: (212) 300-0375
13 Facsimile: (212) 481-1333

14 TERRELL MARSHALL DAUDT
15 & WILLIE PLLC

16 By: /s/ Beth E. Terrell, Admitted Pro Hac Vice
17 Beth E. Terrell, *Admitted Pro Hac Vice*
18 Email: bterrell@tmdwlaw.com
19 Mary B. Reiten, *Admitted Pro Hac Vice*
20 Email: mreiten@tmdwlaw.com
21 936 North 34th Street, Suite 300
22 Seattle, Washington 98103-8869
23 Telephone: (206) 816-6603
24 Facsimile: (206) 350-3528

25 *Attorneys for Plaintiffs and the Putative Class*

CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on December 2, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Craig J. Mariam
Email: cmariam@gordonrees.com
Kristie Morgan Simmerman, *Admitted Pro Hac Vice*
Email: ksimmerman@gordonrees.com
GORDON & REES LLP
633 West Fifth Street, Suite 5200
Los Angeles, California 90071
Telephone: (213) 576-5000
Facsimile: (877) 306-0043

Richard T. Victoria, *Admitted Pro Hac Vice*
Email: rvictoria@gordonrees.com
GORDON & REES LLP
707 Grant St, Suite 3800
Pittsburgh, PA 15219
Phone: (412) 577-7400
Facsimile: (412) 347-5461

Attorneys for Defendants

Lisa M. Simonetti, *Admitted Pro Hac Vice*
Email: lsimonetti@stroock.com
STROOCK & STROOCK & LAVAN LLP
2029 Century Park East
Los Angeles, California 90067
Telephone: (310) 556-5800
Facsimile: (310) 556-5959

Attorney for eBay Enterprise, Inc.

1 DATED this 2nd day of December, 2014.

2 TERRELL MARSHALL DAUDT
3 & WILLIE PLLC

4 By: /s/ Beth E. Terrell, Admitted Pro Hac Vice
5 Beth E. Terrell, *Admitted Pro Hac Vice*
6 Email: bterrell@tmdwlaw.com
7 936 North 34th Street, Suite 300
8 Seattle, Washington 98103-8869
9 Telephone: (206) 816-6603
10 Facsimile: (206) 350-3528

11 *Attorneys for Plaintiffs and the Putative Class*
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